

APPEAL NO. 022494
FILED NOVEMBER 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 21, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on April 20, 2000, with an impairment rating (IR) of 4%. The claimant appeals, arguing that the individual who performed the range of motion (ROM) testing in the exam of the designated doctor was not certified and therefore the designated doctor's certification of MMI and IR should be invalid. The respondent (carrier) responded, maintaining that the claimant failed to meet her burden of proof to demonstrate that the great weight of the medical evidence was contrary to the designated doctor's assessment.

DECISION

Affirmed.

The claimant testified that the designated doctor's assistant performed the ROM testing during her examination on July 5, 2000. The claimant testified that the assistant of the designated doctor did not seem to understand what he was doing because he would perform a test and then leave the room to consult with the designated doctor and then come back and retest the claimant. She argued at both the CCH and on appeal that the doctor's assistant was not certified as completing designated doctor training as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(I) (Rule 130.6(I)) (the rule in effect at the time of the designated doctor's examination).

The only evidence which addresses this issue was a Dispute Resolution Information System note which documented a conversation between Dr. H, the designated doctor's assistant who supposedly performed the ROM testing and a Texas Workers' Compensation Commission (Commission) employee in which Dr. H stated he went to designated doctor training in early 1998 and did not renew his certification after two years. The designated doctor's report listed Dr. MG as performing the ROM measurements under the direction of the designated doctor. A list of designated doctors deleted from the approved doctor list (alphabetical listing H-K) was also in evidence and the only individual with a similar name contained on the list was a Dr. SH in (city 1), Texas. The hearing officer noted that from the evidence presented it was not even clear who performed the ROM testing. The hearing officer was not persuaded that the claimant established that the designated doctor's report was not in accordance with the 1989 Act based on noncompliance with the applicable Rules by the ROM tester. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established.

Section 408.122(c) and 408.125(e) provide, in part, that the report of the designated doctor shall have presumptive weight and that the Commission shall base its determinations of whether the employee has reached MMI and the employee's IR on such report unless it is contrary to the great weight of the other medical evidence. The hearing officer determined that the designated doctor's certification of MMI and IR were not against the great weight of the medical evidence and is in accordance with the 1989 Act and the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. We are satisfied that the challenged factual determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE I, SUITE 750
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge